IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 197/2006

SMT. SUMAN Vs. STATE OF RAJASTHAN & ANR.

DATE: 08.05.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. S.R. Surana for the petitioner.
Mr. B.K. Sharma, Public Prosecutor for the State.
Mr. Biri Singh Sinsinwar for the respondent No.2.

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The present criminal revision petition under Section 397 Cr.P.C. is preferred by the petitioner against the order dated 14.12.2005 passed by the Additional Sessions Judge (Fast Track) No.1, Jaipur District, Jaipur in Sessions Case No. 60/2005 (126/99) arising out of FIR No. 500/1999 registered at Police Station Kotputli, District Jaipur for the offence under Sections 498-A, 307 and 114/120-B IPC, whereby the application filed on behalf of the petitioner under Section 319 Cr.P.C. dated 06.10.2005 has been rejected.

Brief facts of the case are that petitioner Smt. Suman was tortured by her husband and relatives since marriage and suffered cruelty and there was allegations for demand of dowry. It was also alleged that the husband and the relatives along with Chameli

Devi poured kerosene oil on the body of the complainant and put fire and on that count major part of the body was burnt. She received burns on the face, front of the neck, upper extremities, front of the chest, lateral affects of the chest wall, front of the abdomen and at various places of the body. She remained in hospital for continuous months together. On the said 'Parcha-Bayan' a case was registered against the accused under Sections 498-A, 307 and 114/120-B IPC at Police Station Kotputli, District Jaipur. In the evidence recorded allegations are alleged against Chameli Devi and it was direct involvement of Chameli Devi, therefore, the complainant-petitioner moved an application under Section 319 Cr.P.C. and the same has been rejected by the Court below on the ground that Chameli Devi's marriage took place 20 years back prior to marriage of complainant-petitioner. It is further submitted that Chameli Devi was not present at the time of the incident as her in-laws are residing at Jaipur. The Court below also considered Ex.P10 and Ex.P14 and as per Ex.P10 and Ex.P14, no role of Chameli Devi has been observed by the Court below, therefore, the application of the petitioner moved under Section 319 Cr.P.C. has been rejected.

Learned counsel for the petitioner referred the statement of the complainant recorded under Sections 161 and 164 Cr.P.C. and before the Court. In her statement recorded under Section 164 Cr.P.C. the petitioner has stated as under:-

> मेरी ननद चमेली, सास अंगूरी, ससुर प्रहलाद कहते थे कि तूने शादी में क्या लाई है। तेरे माँ बाप ने शादी में क्या दिया है।

Further in her statement recorded under 161 Cr.P.C. petitioner Smt. Suman has stated as under:-

> - - - - - उसके बाद मेरे लड़का हुआ उस समय भी मेरी सास तथा ननद चमेली देवी जेठानी आशा तथा मुन्नी ने मुझे परेशान किया और मुझे ठीक ढंग से खाना तक नहीं दिया - - - -

She further deposed in her statement under Section 161 Cr.P.C. as under:-

> - - - - - आज से करीब तीन चार महीने पहले की बात है कि मेरी सास अंगूरी, ननद चमेली, जेठानी मुन्नी तथा आशा ने मिलकर मेरे उपर मिट्टी का तेल डाल दिया जिससे मेरे कपड़े तेल से भीग गये थे मगर मेरे तिल्ली नहीं लगाई थी मुझे यह लोग काफी परेशान करते थे - - - -

In her statement before the Court PW3 Smt. Suman has stated as under:-

> कमरे से मैं बाहर आई तो बच्चों के लिए टिफिन तैयार करने बाहर आई तो मेरी सास, ससुर जेठ जेठानी, ननद, जेठ नवल व गिरधारी व जिठानी

आशा व मुन्नी व ननद व पति ने मुझे पकड. लिया जबरदस्ती पकड. लिया। गिरधारी व नवल किशोर मिट्टी की तेल की बोतल लेकर आये व मेरे पति का पकडाई व कहा कि इस पर डाल दे व पीछा छुडा दे तेरी दूसरी शादी करवा देंगे। इसका बाप तो कुछ देने वाला नहीं है। मेरे पति ने मेरे पर मिट्टी का तेल डाल दिया। मेरे ससुर के हाथ में माचिस थी, उसने माचिस मेरे पति का दे दी व कहा कि तिली लगा दे तब मेरे पति ने तिली लगा दी- - - - -

It is further stated by the petitioner Smt. Suman in her statement before the Court as under:-

- - - - मेरी ननद चमेली व जेठानी मुन्नी मुझे वापिस अंदर ले जाने की कोशिश करने लगी। मैं जोर से रोई कि ये लोग मुझे जान से मार देंगे मेरे पापा को टेलीफोन करो- - - - - -

Per contra learned counsel Mr. Biri Singh appearing for the respondent Smt. Chameli Devi submits that she was not present at the time of incident and the only allegation alleged in the evidence recorded under Sections 161, 164 Cr.P.C. and the statement before the Court is that merely because the complainant stated that Chameli Devi was also instigating her husband and other relatives, no offence is made out and, therefore, the application of the petitioner moved under Section 319 Cr.P.C. has rightly been rejected by the Court below.

To decide whether any involvement of Smt. Chameli Devi is there or not, it is necessary to carefully examine the statement of PW4 Madanlal, father of petitioner Smt. Suman, who has stated as under:-

> ----इसके डेढ महीने बाद सत्यनारायण मेरी बच्ची को घर लेकर आया तो मेरी बेटी ने बताया कि प्रहलाद, सत्यनारायण, नवल, आशा, मुन्नी, चमेली सभी मुल्जिमान के हाथ में जो आता है उसी से मारते हैं -----

PW4 Madan Lal in his statement further stated as under:-

> दिनांक 22.7.99 को सुबह सात बजे के करीब मेरी बेटी सुमन को केरोसीन तेल से जला दिया। नवल, गिरधारी तेल की बोतल लेकर आये, चमेली, अंगूरी, आशा ने सुमन को पकड लिया। फिर गिरधारी नवल ने सत्यनारायण को बोला कि इस पर तेल डालकर तेरा पीछा छुडा ले। प्रहलाद के हाथ में माचिस थी, सत्यनारायण ने सुमन पर केरोसिन डाला और सुमन के आग लगा दी---- -

All these statements reveal the involvement of Smt. Chameli Devi. It is also not disputed that there are as many as 54 witnesses and the evidence of only 7 witnesses are recorded by the trial Court and as per the statements of the complainant and Madan Lal, the statements recorded under Sections 161, 164 Cr.P.C., involvement of Chameli Devi is reiterated by the witnesses.

Upon careful perusal of the impugned order dated 14.12.2005 as well as the statements recorded, prima-facie involvement of respondent Smt. Chameli Devi is made out though offence under Section 307 IPC is not made out against Smt. Chameli Devi. In such circumstances, rejection of the application under Section 319 Cr.P.C. is per se contrary to the record and the statements and, therefore, the impugned order dated 14.12.2005 deserves to be quashed and set-aside.

Consequently, the impugned order dated 14.12.2005 passed by the Additional Sessions Judge (Fast Track) No.1, Jaipur District, Jaipur is hereby quashed and set-aside and the matter is remanded back to the Court below for fresh adjudication on the application under Section 319 Cr.P.C. in accordance with the provision of law and as per the settled proposition of law laid down by the Hon'ble Supreme Court and this Court.

The revision petition stands allowed as indicated herein above.

(K.S. RATHORE),J.

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